

01223

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-186762

DATE: October 19, 1976

MATTER OF: Watkins-Johnson Company

DIGEST:

Protester has not made clear showing that sole-source award for receiver system is not justified where agency's sole-source determination was based upon side-by-side comparison of protester's and proposed awardee's units.

Watkins-Johnson Company (W-J) has protested the proposed sole-source award to R. E. Grimm Company (Grimm) under request for proposals (RFP) No. F41621-76-R-0845, issued by the United States Air Force Security Service (USAFSS), San Antonio, Texas. The protest is based on the allegation that the sole-source procurement violates applicable Armed Services Procurement Regulation requiring maximum competition since W-J has previously supplied the identical item to the Government.

We have consistently recognized that the determination of the needs of the Government and the methods of accommodating such needs are primarily the responsibility of the contracting agencies of the Government. Manufacturing Data Systems, Incorporated, B-180608, June 28, 1974, 74-1 CPD 348; B-174140, B-174205, May 16, 1972; 38 Comp. Gen. 190 (1958). Generally, the Government procurement officials, who are familiar with the conditions under which supplies are to be used, are in the best position to know the Government's actual needs and, therefore, are best able to draft appropriate specifications. Particle Data, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257. Accordingly, we will not question an agency's determination of what its actual minimum needs are absent a clear showing that the determination has no reasonable basis. Particle Data, Inc., *supra*. Furthermore, while sole-source procurements are subject to close scrutiny by our Office, where the legitimate needs of the Government can only be satisfied by a single source, the law does not require these needs be compromised in order to obtain competition. Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14.

The requirement under protest is under the technical cognizance of the National Security Agency (NSA). In this regard, the Agency states that technical proposals were requested from W-J and Grimm in December 1975. NSA's evaluation of both units resulted in the conclusion that only the Grimm unit met its needs. The Grimm data was not purchased by either NSA or USAFSS and is proprietary as it was developed at Grimm's own expense. Consequently, NSA requested USAFSS to procure the units from Grimm and stated the specific model number in its purchase request authorization. The justification for the sole-source procurement was that the Grimm unit was the only known item that would meet the electrical, physical and functional specifications. It is also noted that the unit being procured is a follow-on to identical equipment presently being procured from Grimm. In this connection, the agency report states that the procurement of any unit other than Grimm's would require substantial modifications to the NSA and USAFSS receiving systems which would be uneconomical and also create interface problems. Also, the Grimm unit is remotely tuned exclusively by electronic analog voltage, while the tuner system of W-J is composed of a mechanical drive which is controlled by electronic analog circuitry. Because of this difference, the W-J unit is considered too mechanically complex and not capable of sustained operation in a harsh environment.

The Determination and Findings issued by the contracting officer on May 27, 1976, states that use of formal advertising is impractical as only Grimm can provide the required equipment. Sole-source procurement by negotiation is authorized under 10 U.S.C. § 2304(a)(10) (1970), as implemented by Armed Services Procurement Regulation (ASPR) § 3-210.2(1) (1975 ed.), which allows procurement by negotiation when supplies can be obtained from only one source. As previously stated, W-J presented its proposed system to NSA for evaluation December 1975. NSA engineers determined the W-J system not to be identical to the Grimm receiver system and not an acceptable substitute.

Under the circumstances of the present case, we cannot conclude that W-J has made a clear showing that the Agency's determination was without a reasonable basis. While the protester argues vigorously that its unit is "identical" to Grimm's, the Agency contends otherwise on the basis of a side-by-side comparison. We have held that a sole-source procurement is proper where, as here, to do otherwise would require costly modifications. See Hughes Aircraft Company, 53 Comp. Gen. 676 (1974), 74-1 CPD 138; B-173197, September 29, 1971. Furthermore, the fact that "similar" equipment had been furnished to other

B-186762

Government agencies is of no consequence, as one agency's determination of minimum needs is not determinative of the propriety of another agency's minimum needs. Maremont Corporation, B-186276, August 20, 1976, 55 Comp. Gen. _____, 76-2 CPD 181.

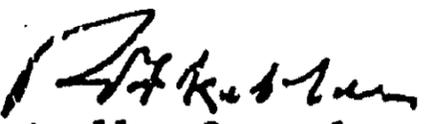
Moreover, in the instant case, the record indicates that adequate specifications could not be drawn to allow competition as the information was proprietary to Grimm. In this regard, ASPR § 1-304.2(b)(2) (1975 ed.) states:

"When items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a non-competitive basis from the firm which developed or designed the item or process or its licensees, provided productive capacity and equality are adequate and price is fair and reasonable."

In addition, the prices quoted for the present contract were the same as under a previous contract which were the subject of a detailed review and audit. It would appear then that the price Grimm offered is fair and reasonable.

Accordingly, the protest is denied.

Acting


Comptroller General
of the United States